REMARKS

Claims 1-32 are pending in the subject application, and these claims have been examined and stand rejected. No claims have been amended. Favorable reconsideration of the application and allowance of all of the pending claims are respectfully requested in view of the following remarks.

In the Final Office Action, claims 1-20, 23, and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. US 2001/0041496 to Smirnov (*Smirnov*) in view of U.S. Patent No. 6,901,971 to Speasl et al. (*Speasl*). Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smirnov* in view of U.S. Patent No. 6,712,667 to Melzer et al. (*Melzer*). Claim 22 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smirnov* in view of U.S. Patent No. 6,224,455 to Laurienzo (*Laurienzo*). Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smirnov* in view of *Speasl* and further in view of U.S. Patent Application Publication No. 2002/0086607 to Chan (*Chan*). Claims 25 and 26 were rejected under 35 US.C. § 103(a) as being unpatentable over *Smimov* in view of *Speasl* and further in view of *Melzer*. Claims 27 and 28 were rejected under 35 US.C. § 103(a) as being unpatentable over *Smirnov* in view of *Speasl* and further in view of *Laurienzo*. Claims 30-32 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Speasl*.

These rejections are substantially similar to the rejections set forth in the previous Office Action. These rejections are respectfully traversed based upon the same remarks set forth in the previous Amendment filed June 27, 2006 (which are also incorporated herein by reference) and also the following remarks set forth in numbered fashion. **The Examiner is respectfully**

requested to clearly and completely address each of the points set forth below in the Examiner's next response.

1. **The Examiner has failed to adequately address all of the limitations of claims 1-20, 23, and 29 as being unpatentable over *Smirnov* in view of *Speasl* in the Office Action, and the rejection of these claims is improper and should be withdrawn.**

Section 707.07 of the MPEP (which quotes 37 C.F.R. §1.104), clearly states that an Examiner's action will be complete as to all matters. Accordingly, if an Examiner maintains a rejection of the claims, the Examiner must at the very least be fully responsive in addressing all of the arguments set forth by the Applicant. In the Final Office Action, the Examiner has failed to provide an adequate response to arguments by Applicants with respect to the patentability of the claims over any combination of *Smirnov* and *Speasl*.

In the Amendment filed June 27, 2006, a number of arguments were presented regarding the inappropriate combination of *Smirnov* with *Speasl* to reject certain claims. Applicants initially noted that *Smirnov* and *Speasl* are completely non-analogous with respect to each other, since the two references are in different fields of endeavor and the function and design of the transport container of *Speasl* is not remotely pertinent to the toy of *Smirnov*. Thus, Applicants previously argued that it is improper for the Examiner to combine these two reference in an attempt to assert any of the pending claims are obvious under 35 U.S.C. §103(a). Applicants repeat below their request for the Examiner to address this issue.

a. Applicants request that the Examiner properly identify how *Smirnov* and *Speasl* are being used to reject claims 1-20, 23, and 29.

In particular, Applicants request that the Examiner identify how *Speasl* is being used to modify *Smirnov* in the rejection of claims 1-20, 23, and 29. In this Office Action, those claims are alleged as being unpatentable over *Smirnov* in view of *Speasl*. In this rejection, the only claim for which reference to *Speasl* is made is claim 23. In particular, the only claim limitation identified by the Examiner as not being disclosed by *Smirnov* is "the breath sensor assembly having an arrangement of a plurality of breath sensors placed in a channel," which is recited in claim 23. Further, *Speasl* was referred to as disclosing "a breath sensor assembly having a plurality of breath sensors which may be placed in a channel and thus is protected from exposure to air (col. 6, lines 7-10)." Thus, it appears that the Examiner has applied *Smirnov* to claims 1-20, and 29 as an anticipatory reference under 35 U.S.C. § 102(b). Applicants note that the Office Action states on page 8 that "[i]n this case every element set forth in the claim 1 have been found in *Smirnov*." Thus, Applicants request that the Examiner properly identify the references and the manner in which they are being used to reject each of the elements of claims 1-20, 23, and 29.

b. Applicants request that the Examiner properly address the issue of *Smirnov* and *Speasl* being non-analogous art.

As indicated above, the previous Response set forth arguments as to why *Smirnov* and *Speasl* are non-analogous art with respect to each other. *Smirnov* discloses a talking toy and *Speasl* discloses a transportable container that is used for carrying semiconductor wafers within a semiconductor wafer fabrication process. *Smirnov* discloses the use of a temperature sensor that measures the temperature external to the toy. A message is reproduced by the toy of *Smirnov* based in part "on surrounding temperature and other environment conditions." *Speasl* discloses the use of different sensors inside of a transportable container in its internal environment which is "isolated from ambient atmospheric conditions." (Col. 3, lines 9-11)

The Examiner failed to address the Applicants' argument that *Smirnov* and *Speasl* are non-analogous art with respect to each other. In other words, the Examiner has provided no rationale in response to Applicants' arguments as to how the teachings of *Speasl* could be integrated into the mechanism of *Smirnov* in an effective manner without completely modifying or destroying the function design and intended purpose of the device taught by *Smirnov*. Moreover, the sensors of *Smirnov* and *Speasl* are used to measure different environments in different applications.

Since the Examiner has failed to fully and adequately respond to Applicants' arguments, the Examiner should either withdraw the rejections of the claims based upon *Smirnov* in view of *Speasl* or, alternatively, provide a further Office Action that is complete and is fully responsive

to all of the substantive arguments raised by Applicants as to the improper combination of these references to reject the claims.

c. Applicants request that the Examiner properly identify the features of *Smirnov* that are being used in the rejection of the claims.

In the Office Action, the term "reference sensor" is alleged to be disclosed in *Smirnov* at "paragraph 0077, lines 3-5, providing a corresponding sensor connected to a processor; since the corresponding sensor is connected to a processor [which stores digital values] it is inherently capable of detecting an ambient value." Referring to paragraph 0077 of *Smirnov*, the paragraph actually recites: "Furthermore, not only temperature can be used as a characteristic of environment but atmospheric pressure, humidity, illumination, level of acoustic noise, etc. To detect these environment characteristics, it is necessary to install corresponding sensors, connect them to controller 21 and process this data in the program of selecting a message for reproduction." It is not clear how the Examiner is interpreting that disclosure of *Smirnov* as teaching or suggesting a reference sensor as recited in the claims. Applicants assert that *Smirnov* does not disclose a "reference sensor" or the use of a "reference sensor" as recited in independent claims 1, 11, and 29.

Further, Applicants assert that there is no need to modify the mechanism disclosed by *Smirnov* to include a reference sensor because *Smirnov* discloses measuring an environmental characteristic and using that measurement as one of several factors that determines a particular output by the toy. There is no comparison of an environmental characteristic measured by one

sensor with an environmental characteristic measured by another sensor. Accordingly, any use of *Smirnov* as teaching a "reference sensor" as recited in the claims is improper.

Applicants respectfully request that the Examiner withdraw the rejections of the claims based upon *Smirnov* in view of *Speasl* or, alternatively, provide a further Office Action that is complete and that does not misinterpret the disclosure of *Smirnov*.

d. Applicants assert that the rejection of claim 23 is improper and request that the Examiner withdraw the rejection.

Independent claim 23 recites in part "a breath-sensitive musical toy having channels, comprising: a plurality of breath sensors, each placed in a channel of the toy and each having an electrical characteristic responsive to the presence of breath." The Office Action incorrectly states that "*Smirnov* does not disclose the breath sensor assembly having an arrangement of a plurality of breath sensors placed in a channel. *Speasl* discloses a breath sensor assembly having a plurality of breath sensors which may be placed in a channel and thus is protected from exposure to air (col. 6, lines 7-10)."

Referring to the referenced location in *Speasl*, *Speasl* recites: "[h]umidity sensor 404c includes a single channel for sensing the humidity within the pod." As Applicants have already set forth in the previous Amendment filed June 27, 2006, in the context of electrical components, as discussed in *Speasl*, a "channel" refers to a specified frequency range for the transmission and reception of electromagnetic signals. The sensor disclosed in *Speasl* is not placed in a channel as

recited in claim 23. Accordingly, the Examiner has improperly interpreted the disclosure of *Speasl*.

In the instant application, Applicants disclose channels 612 that are included in the musical toy embodiment of a pan flute 610 that is illustrated in Fig. 7. Additionally, Applicants disclose channels 712 that are included in the musical toy embodiment of a harmonica 710 that is illustrated in Fig. 8. Each of these types of channels is structural and with respect to claim 23, each of the plurality of sensors is placed in a channel. (emphasis added) Either alone or in combination, *Smirnov* and *Speasl* fail to teach or suggest the invention as recited in claim 23.

Applicants respectfully request that the Examiner withdraw the rejections of the claim 23 based upon *Smirnov* in view of *Speasl* or, alternatively, provide a further Office Action that is complete and that does not misinterpret the disclosure of *Speasl*.

2. The Examiner has failed to adequately respond to Applicants' previous arguments regarding the patentability of claim 21, and the rejection of this claim is improper and should be withdrawn.

Applicants would like to point out an inconsistency in the rejection of claim 21. In the Office Action, claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smirnov* in view of *Melzer*. However, claim 21 depends from claim 20, which was rejected as being unpatentable over *Smirnov* in view of *Speasl*. As a result, the alleged rejection of claim 21 should be *Smirnov* in view of *Speasl* and further in view of *Melzer*. Accordingly, the rejection of claim 21 is based on the combination of three references: *Smirnov*, *Speasl*, and *Melzer*.

The Office Action states that *Smirnov* "discloses the claimed invention except for a sounding accessory in the form of a pan flute." That statement is interpreted to mean that *Smirnov* is alleged to anticipate claim 20 which depends from claim 11, but that is not how *Smirnov* was applied to those claims.

The Office Action further states that *Melzer* teaches "a toy having a musical instrument in the form of a pan flute" and that it would have been obvious to "provide a sounding accessory in the form of a pan flute as taught by *Melzer* since such a modification would make the toy more appealing to a child." *Melzer* discloses two-dimensional action figures that are formed from articulatable, posable magnets. The "pan flute" that *Melzer* discloses is referred to once in *Melzer*. *Melzer* recites that "[a]n assembly incorporating articulated figures of the Greek Gods as character objects with harps, pan flutes, togas, and wine vessels as accessory objects might be created for use as an educational tool for students studying Greek mythology." (Col. 8, lines 40-45). This sentence is in a paragraph that lists different types of two-dimensional magnets that can be used in other embodiments of the invention. *Melzer* teaches themed illustrations of musical instruments rather than a musical toy in the form of a pan flute capable of producing a musical tone. The pan flute disclosed in *Melzer* does not play any music. Applicants assert that the purported motivation of to "make the toy more appealing" is insufficient to overcome the deficiencies of the combination of *Melzer* with *Smirnov* and *Speasl*. Moreover, the Examiner has failed to adequately address the arguments presented in the Amendment filed June 27, 2006.

Since the Examiner has failed to fully and adequately respond to Applicants' previous arguments, the Examiner should either withdraw the rejection of the claim based upon *Smirnov*

in view of *Speasl* and further in view of *Melzer* or, alternatively, provide a further Office Action that is complete and is fully responsive to all of the substantive arguments raised by Applicants as to the improper combination of these references to reject the claim.

3. The Examiner has failed to adequately respond to Applicants' previous arguments regarding the patentability of claim 22, and the rejection of this claim is improper and should be withdrawn.

In the Office Action, claim 22 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smirnov* in view of *Laurienzo*. However, Applicants note that claim 22 depends from claim 20, which was rejected as being unpatentable over *Smirnov* in view of *Speasl*. As a result, the alleged rejection of claim 22 should be *Smirnov* in view of *Speasl* and further in view of *Laurienzo*. Accordingly, the rejection of claim 22 is based on the combination of three references: *Smirnov*, *Speasl*, and *Laurienzo*.

The Office Action states that *Smirnov* "discloses the claimed invention except for a sounding accessory in the form of a harmonica." That statement is interpreted to mean that *Smirnov* is alleged to anticipate claim 20 which depends from claim 11, but that is not how *Smirnov* was applied to those claims.

The Office Action further states that *Laurienzo* teaches "a toy having a musical instrument in the form of a harmonica" and that it would have been obvious to "provide a sounding accessory in the form of a harmonica as taught by *Laurienzo* since such a modification would make the toy more appealing to a child."

Laurienzo discloses a plush toy figure that includes "a simulated harmonica 30 preferably formed of a material such as molded plastic or the like and preferably having a light transmissive body such as transparent tinted plastic." (Col. 3, lines 31-35) The harmonica disclosed in *Laurienzo* does not play any music and is a simulated harmonica with a light disposed therein. Applicants assert that the purported motivation of to "make the toy more appealing" is insufficient to overcome the deficiencies of the combination of *Laurienzo* with *Smirnov* and *Speasl*. Moreover, the Examiner has failed to adequately address the arguments presented in the Amendment filed June 27, 2006.

Since the Examiner has failed to fully and adequately respond to Applicants' arguments, the Examiner should either withdraw the rejection of the claim based upon *Smirnov* in view of *Speasl* and further in view of *Laurienzo* or, alternatively, provide a further Office Action that is complete and is fully responsive to all of the substantive arguments raised by Applicants as to the improper combination of these references to reject the claim.

4. The Examiner has failed to adequately respond to Applicants' previous arguments regarding the patentability of claim 24, and the rejection of this claim is improper and should be withdrawn.

In the Office Action, claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claim 23 and further in view of *Chan*. Accordingly, the rejection of claim 24 is based on the combination of three references: *Smirnov*, *Speasl*, and *Chan*.

Dependent claim 24 recites "wherein the electrical characteristic is responsive to the quantity of breath, and wherein the musical output has a volume, the processor further activating the speaker to produce output volume correlated with the quantity of breath." *Chan* discloses an interactive electronic doll or toy character that includes receiving means to receive and distinguish normal human speaking voices from whispered human speaking voices. The receiving means is disclosed as a microphone 3 that is located proximate to an ear of the doll.

The Office Action states that "*Chan* teaches a toy that provides a response depending on the quantity of breath (the quantity of breath is detected by a microphone which permits the doll to provide a whisper or non-whisper mode response, paragraph 0041)." However, paragraph 0041 of *Chan* actually recites that "[t]he microphones convert the sound of the human speech to electrical signals which will vary depending upon the **volume** of the speech detected." (emphasis added) The detection of the "volume of the speech" is not the same as the detection of the "quantity of breath" as alleged by the Examiner.

The Examiner has alleged that it would have been obvious "to provide an output volume depending on the quantity of breath, since such a modification would provide a more realistic simulation of human interaction." Applicants assert that the Examiner has failed to properly identify any motivation taken from the prior art for the alleged modification of *Smirnov* and *Speasl* in view of *Chan*. Moreover, *Chan* does not even teach or suggest the feature recited in claim 24 for which it is used by the Examiner in the rejection.

Applicants request that the withdraw the rejection of claim 24 or, alternatively, provide a further Office Action that is complete and is fully responsive to all of the substantive arguments raised by Applicants as to the improper combination of these references to reject the claim.

5. The Examiner has failed to adequately respond to Applicants' previous arguments regarding the patentability of claims 25 and 26, and the rejection of these claims is improper and should be withdrawn.

In the Office Action, claims 25 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 23 and 24 above, and further in view of *Melzer*.

Claim 25 depends from claim 23 and therefore, claim 25 is alleged to be unpatentable over *Smirnov* in view of *Speasl* and further in view of *Melzer*. Accordingly, the rejection of claim 25 is based on the combination of three references: *Smirnov*, *Speasl*, and *Melzer*.

Melzer fails to remedy the deficiencies in the rejection of claim 23 over *Smirnov* in view of *Speasl* as discussed above. Further, the deficiencies discussed above with respect to claim 21 regarding the use of *Melzer* to teach the claimed feature of a pan flute apply to the rejection of claim 25 as well. Applicants respectfully submit that *Smirnov*, *Speasl*, and *Melzer*, taken alone or in any combination, fail to teach or suggest the invention as recited in claim 25. Accordingly, Applicants request that the rejection of claim 25 be withdrawn.

Claim 26 depends from claim 24 and therefore, claim 26 is alleged to be unpatentable over *Smirnov* in view of *Speasl* and further in view of *Chan* and further in view of *Melzer*.

Accordingly, the rejection of claim 26 is based on the combination of four references: *Smirnov*, *Speasl*, *Chan*, and *Melzer*.

Melzer fails to remedy the deficiencies in the rejection of claim 24 over *Smirnov* in view of *Speasl* and further in view of *Chan* as discussed above. Further, the deficiencies discussed above with respect to claim 21 regarding the use of *Melzer* to teach the claimed feature of a pan flute as well as with respect to claim 24 regarding the use of *Chan* apply to the rejection of claim 26 as well. Applicants respectfully submit that *Smirnov*, *Speasl*, *Chan*, and *Melzer*, taken alone or in any combination, fail to teach or suggest the invention as recited in claim 26. Accordingly, Applicants request that the rejection of claim 26 be withdrawn.

Applicants request that the withdraw the rejection of claims 25 and 26 or, alternatively, provide a further Office Action that is complete and is fully responsive to all of the substantive arguments raised by Applicants as to the improper combination of these references to reject the claims.

6. The Examiner has failed to adequately respond to Applicants' previous arguments regarding the patentability of claims 27 and 28, and the rejection of these claims is improper and should be withdrawn.

In the Office Action, claims 27 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to claims 23 and 24 above, and further in view of *Laurienzo*.

Claim 27 depends from claim 23 and therefore, claim 27 is alleged to be unpatentable over *Smirnov* in view of *Speasl* and further in view of *Laurienzo*. Accordingly, the rejection of claim 27 is based on the combination of three references: *Smirnov*, *Speasl*, and *Laurienzo*.

Laurienzo fails to remedy the deficiencies in the rejection of claim 23 over *Smirnov* in view of *Speasl* as discussed above. Further, the deficiencies discussed above with respect to claim 22 regarding the use of *Laurienzo* to teach the claimed feature of a harmonica apply to the rejection of claim 27 as well. Applicants respectfully submit that *Smirnov*, *Speasl*, and *Laurienzo*, taken alone or in any combination, fail to teach or suggest the invention as recited in claim 27. Accordingly, Applicants request that the rejection of claim 27 be withdrawn.

Claim 28 depends from claim 24 and therefore, claim 28 is alleged to be unpatentable over *Smirnov* in view of *Speasl* and further in view of *Chan* and further in view of *Laurienzo*. Accordingly, the rejection of Claim 28 is based on the combination of four references: *Smirnov*, *Speasl*, *Chan*, and *Laurienzo*.

Laurienzo fails to remedy the deficiencies in the rejection of claim 24 over *Smirnov* in view of *Speasl* and further in view of *Chan* as discussed above. Further, the deficiencies discussed above with respect to claim 22 regarding the use of *Laurienzo* to teach the claimed feature of a harmonica as well as with respect to claim 24 regarding the use of *Chan* apply to the rejection of claim 26 as well. Applicants respectfully submit that *Smirnov*, *Speasl*, *Chan*, and *Laurienzo*, taken alone or in any combination, fail to teach or suggest the invention as recited in claim 28. Accordingly, Applicants request that the rejection of claim 28 be withdrawn.

Applicants request that the withdraw the rejection of claims 27 and 28 or, alternatively, provide a further Office Action that is complete and is fully responsive to all of the substantive arguments raised by Applicants as to the improper combination of these references to reject the claims.

7. The Examiner has failed to adequately respond to Applicants' previous arguments regarding the patentability of claims 30-32, and the rejection of these claims is improper and should be withdrawn.

In the Office Action, claims 30-32 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Speasl*. Independent claim 30 recites an environment-sensitive toy that comprises a first sensor responsive to an environmental factor at a first location of the toy, a second sensor responsive to an environmental factor at a second location of the toy protected from air exposure, an output device; and a processor coupled to the first and second sensors and adapted to compare the environmental factor in the first location to the environmental factor in the second location and activate the output device when a threshold difference in the environmental factors is sensed.

As set forth in the Amendment filed June 27, 2006, *Speasl* discloses mounting sensors to internal portions of a transportable shell to measure environmental characteristics at different positions within the shell. Not only does *Speasl* fail to disclose or suggest the recited subject matter of claim 30, but it would also be disadvantageous for such a sensor to be placed in a location protected from air exposure since the objective of *Speasl* is to monitor environmental conditions during transport of sensitive goods, therefore necessitating accurate readings. Thus,

since *Speasl* fails to teach or suggest the invention as recited in claim 30, Applicants request that the rejection of claim 30 be withdrawn. Each of the dependent claims 31 and 32 is allowable for its dependency from claim 30 and for the additional features that it recites.

In view of the foregoing, the Examiner is respectfully requested to find claims 1-32 to be in condition for allowance. **Alternatively, if the Examiner intends to maintain the claim rejections, it is respectfully submitted that another Office Action must be issued that is sufficient and fully responsive to each of the numbered issues set forth above.**

In addition, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.

Applicants hereby petition for any extension of time that may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 05-0460.

Respectfully submitted,

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